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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,713	03/10/2004	Rolf U. Halden	JHUHLD1	4304
49383	7590	02/20/2009		
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BOSTON, MA 02205				
EXAMINER				
BEISNER, WILLIAM H				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
02/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,713

Applicant(s)

HALDEN, ROLF U.

Examiner

WILLIAM H. BEISNER

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-28, 33 and 37-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-28, 33 and 37-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/13/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 17-28, 33 and 37-45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 17, 19, 20, 25-28 and 41-44 all appear to invoke 35 USC 112, 6th paragraph, by reciting the following "means plus function" language:

Claim 17: "means for containing and protecting" and "means for covering".

Claims 19 and 20: "means for causing fluid flow"; "means for collecting and retaining"; and "means for preventing backflow".

Claims 24-28: "means for containing".

Claims 41-44: "means for remotely controlling".

The above claims are considered as failing to comply with the written description requirement because the written description (specifically the specification) fails to link or associate particular structure, material, or acts to the function recited in a means-(or step-) plus function claim limitations. Review of the instant specification fails to clearly link or associate particular structure, material, or acts to the function recited in the means plus function limitations listed above.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 17-28, 33 and 37-45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17, 19, 20, 25-28 and 41-44 all appear to invoke 35 USC 112, 6th paragraph, by reciting the following "means plus function" language:

Claim 17: "means for containing and protecting" and "means for covering".

Claims 19 and 20: "means for causing fluid flow"; "means for collecting and retaining"; and "means for preventing backflow".

Claims 24-28: "means for containing".

Claims 41-44: "means for remotely controlling".

The above claims are considered to be indefinite because the metes and bounds of the claims cannot be clearly determined since the specification fails to clearly link or associate particular structure, material, or acts to the function recited in the means plus function limitations listed above.

Claim 17 is additionally indefinite because it is not clear how sampled microorganisms can be maintained in a block with flowthrough openings. It is suggested that the claim language further include "wherein the holes are configured to allow fluid to flow from an inlet end to an outlet end while retaining microorganisms within the microcosms defined by the solid block".

Claim 45 is indefinite because "said microtiter plate" lacks antecedent basis.

Allowable Subject Matter

6. Claims 17-28, 33 and 37-45 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraph, set forth in this Office action.

7. The following is a statement of reasons for the indication of allowable subject matter:

Claims 17-28, 33 and 37-45 would be allowable if amended to clearly define the structure of "a rapidly, exchangeable microtiter plate" or "multiwell plate" because the prior art of record fails to teach or fairly suggest replacing the fluid flow paths (29, 41, 42, 43) of the reference of Halliburton (US 2,609,878) with "a rapidly, exchangeable microtiter plate" or a block of material with a plurality of through-holes (microcosms) wherein the holes are configured to allow fluid to flow from an inlet end to an outlet end while retaining microorganisms within the microcosms defined by the plate.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/
Primary Examiner
Art Unit 1797**

WHB